

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

PETER TASSMER and KAREN CANNON,
individually and on behalf of all others similarly
situated,

Plaintiffs,

Case No.: 1:2021-cv-00790-JLS

v.

PROFESSIONAL BUSINESS SYSTEMS d/b/a
PRACTICEFIRST MEDICAL MANAGEMENT
SOLUTIONS and PBS MEDCODE CORP., a
Delaware corporation,

Defendants.

PAUL COMMISSO and GLENDA JOHNSON,
individually an on behalf of all others similarly
situated,

Plaintiffs,

Case No.: 1:2021-CV-00937-JLS

v.

PROFESSIONAL BUSINESS SYSTEMS d/b/a
PRACTICEFIRST MEDICAL MANAGEMENT
SOLUTIONS,

Defendant.

STIPULATION AND ORDER RE: CONSOLIDATION

WHEREAS, the Plaintiffs and Defendants in two related cases pending before this Court — *Tassmer et al. v. Professional Business Services d/b/a PracticeFirst Medical Management Solutions and PBS Medcode Corp.*, No. 1:21-cv-00790-JLS (“*Tassmer*”), filed July 9, 2021, and *Commisso et al. v. Professional Business Services*, No. 1:21-cv-00937-JLS (“*Commisso*”) (collectively, the “Related Actions”), filed August 17, 2021, agree that these actions, as well as any subsequently filed or transferred related actions, for all purposes, including pretrial

proceedings and trial, should be consolidated pursuant to Federal Rule of Civil Procedure 42(a) (“Rule 42(a)”); and

WHEREAS, the complaints in the Related Actions relate to the same, common factual allegations and legal theories; the Related Actions assert common causes of action against the common Defendant, to wit, Professional Business Services d/b/a PracticeFirst Medical Management Solutions (“PracticeFirst”) relating to the same factual underpinnings, and seek the same relief in response to the same event; the Related Actions commonly seek certification of an overlapping nationwide class and allege that class members suffered harm as a result of the Data Breach because their personal information was exposed to third parties without their authorization; and

NOW THEREFORE, the Parties stipulate and the Court so Orders as follows:

1. The *Tassmer* and *Commisso* actions currently pending in this District, and any other action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District, shall be consolidated for pre-trial purposes pursuant to Rule 42(a) (hereafter the “Consolidated Action”).

2. All papers filed in the Consolidated Action shall be filed under Case No.: 1:2021-cv-00790-JLS, the number assigned to the first-filed case, and shall bear the following caption:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IN RE: PRACTICEFIRST DATA BREACH
LITIGATION

Master File No.

This Document Relates To:

3. The case file for the Consolidated Action will be maintained under Master File No.: 1:2021-cv-00790-JLS. When a pleading is intended to apply to all actions to which this Order applies, the words “All Actions” shall appear immediately after the words “This Document Relates To:” in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates To:” in the caption identified above, e.g., “No. 1:2021-cv-00790-JLS (Tassmer)”.

4. Any action subsequently filed in, transferred to, or removed to this Court that arises out of the same or similar operative facts as the Consolidated Action, shall be consolidated with the Consolidated Action for pre-trial purposes. The parties shall file a Notice of Related Action whenever a case that should be consolidated into this action is filed in, transferred to, or removed to this District.

5. If the Court determines that the case is related, the clerk shall:

- a. Place a copy of this Order in the separate file for such action;
- b. Serve on Plaintiffs’ counsel in the new case a copy of this Order;
- c. Direct that this Order be served upon Defendant(s) in the new case; and
- d. Make appropriate entry in the Master Docket.

6. The Plaintiffs shall file a Consolidated Amended Complaint no later than thirty (30) days following the entry of this consolidation order.

7. Any response to the Consolidated Amended Complaint shall be due within thirty (30) days from the filing of the Consolidated Amended Complaint. All prior response deadlines

are vacated. Should Defendant intend to file one or more motions to dismiss, the Parties will comply with Local Civil Rule 7 with the following clarifications and/or adjustments:

- a. Any opposition to a motion to dismiss shall be filed and served within thirty (30) days of the filing of the motion to dismiss; and
- b. Any reply brief shall be filed and served within fourteen (14) days of the opposition.

8. This Order shall apply to the above-captioned matters, any subsequently consolidated action, any actions consolidated with the above-captioned matters, and any actions filed in or transferred or removed to this Court relating to the fact and the data breach underlying this litigation.

SEEN AND AGREED:

/s/ Gary S. Graifman

Gary S. Graifman

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*Counsel for Defendants Professional Business Systems d/b/a PracticeFirst Medical
Management Solutions and Medcode Corp.*

IT IS SO ORDERED:

DATED: _____

JOHN L. SINATRA
UNITED STATES DISTRICT JUDGE